

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

KIMBERLY NECOLE MITCHELL,

Plaintiff,

v.

SOCIAL SECURITY DEPT.,

Defendant.

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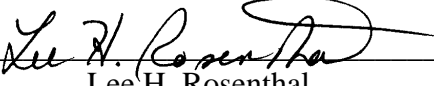
CIVIL ACTION NO. H-12-2402

**ORDER ADOPTING MEMORANDUM AND RECOMMENDATION AND GRANTING
MOTION TO DISMISS**

The proper defendant in this case is Michael J. Astrue, Commissioner of the Social Security Administration. This court has reviewed the Memorandum and Recommendation issued by Magistrate Judge Milloy on November 13, 2012, granting the defendant's motion to dismiss for failure to exhaust, and made a *de novo* determination. Rule 72(b), Fed. R. Civ. P.; 28 U.S.C. § 636(b)(1)(C); *United States v. Wilson*, 864 F.2d 1219 (5th Cir. 1989). Based on the pleadings, the record, and the applicable law, this court adopts the Memorandum and Recommendation as this court's Memorandum and Order. This court finds and concludes that the plaintiff has failed to exhaust her administrative remedies and that a waiver of the exhaustion requirement is not justified. This action is dismissed, with prejudice.

This is a final judgment.

SIGNED on December 5, 2012, at Houston, Texas.



Lee H. Rosenthal
United States District Judge